(3)

No. 00-703

Supreme Court, U.S.
FILED
DEC - 7 2000
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

LINDA KATES - Petitioner

vs.

STATE OF OHIO - Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE MAHONING COUNTY COURT OF APPEALS,
SEVENTH APPELLATE DISTRICT OF OHIO

REPLY TO BRIEF IN OPPOSITION

J. Michael Goldberg (Ohio #0046685)
Counsel of Record for Petitioner
Steven M. Goldberg (Ohio #0041344)
STEVEN M. GOLDBERG CO., LPA
Summit Professional Centre
6600 Summit Drive
Canfield, Ohio 44406-9510
Ph: 330.533.8302
Fax: 503.213.6920

3pp

ARGUMENT

I. A SINGLE FAILURE TO ACT MAY NOT ARBITRARILY BE DIVIDED INTO TWO OR MORE SEPARATE ACTS TO PERMIT MULTIPLE PROSECUTIONS. ACCORD, BROWN V. OHIO, 432 U.S. 161 (1977)

Petitioner Linda Kates' criminal conduct involved leaving her two children at home unattended. She left, and she returned. Within that single time frame, fire consumed her home, and smoke claimed her son Jameeqkwa.

Petitioner's *absence* – her failure within that single time frame to be at home with her two children – constituted a failure to act for which she was charged criminally. And prosecuted twice.

The State proposes that "When criminal *actions* cause harm to more than one victim double jeopardy does not prevent prosecution for the crimes against the separate victims." Yet, the State has failed to present even a single case to support its proposition, which presumes multiple acts by Petitioner. Moreover, the State's presumption finds no factual support in the Record, which reflects the trial court's express finding that "the misdemeanor tried involves exactly the same act, transaction and animus as the felony. . . ." *[Petition for Writ of Certiorari, Appendix B, p.2, ¶3].*

The State asserts – as it has throughout these proceedings – that Petitioner's single, measurable absence should be divided into two separate acts because there were two victims. However, in Brown v. Ohio, 432 U.S. 161 (1977), this Honorable Court squarely denounced this type of bootstrapping, stating that "The Double Jeopardy clause is not such a fragile guarantee that prosecutors can avoid its limitations by the

simple expedient of dividing a single crime into a series of temporal or spatial units. . . ."

In any event, the state conveniently has ignored the fact that *both* children were specifically named in the bill of particulars filed in the *first* prosecution. In response to Petitioner's written request, the State provided a bill of particulars, according to which the State sought to prove that Petitioner endangered her children when she "left her *children* unattended without supervision in the residence creating a risk of harm *to Jameeqkwa and Shayla Kates.*" *[Emphasis added].*

Therefore, even under the State's proposal, Petitioner was prosecuted twice for her offense against her son, Jameeqkwa, in violation of her Fifth Amendment right under the Double Jeopardy Clause.

CONCLUSION

For the reasons set forth herein and in Petitioner's Brief, the petition for writ of certiorari should be granted.

Respectfully submitted,

6 December 2000

J. Michael Goldberg
Counsel of Record for Petitioner
Steven M. Goldberg
STEVEN M. GOLDBERG CO., LPA
Summit Professional Centre
6600 Summit Drive
Canfield, Ohio 44406-9510
Ph: 330.533.8302
Fax: 503.213.6920